

## Message

---

**From:** McAtee, Jeffrey [McAtee.Jeffrey@epa.gov]  
**Sent:** 6/30/2021 10:26:37 PM  
**To:** Gray, David [gray.david@epa.gov]; Tanimura, Erin [Tanimura.Erin@epa.gov]; Gee, Randy [Gee.Randy@epa.gov]  
**CC:** Acevedo, Janie [Acevedo.Janie@epa.gov]; Balandran, Olivia-R [balandran.olivia-r@epa.gov]; Wang, Jonathan [Wang.Jonathan@epa.gov]  
**Subject:** ACTION: RA Update 07-01-21  
**Attachments:** RA Update 07-01Draft v2-jm.docx; Unused 07-01.docx

**Importance:** High

### **R6 Weekly Update**

**July 1, 2021**

### **Hot Topics**

#### **Denka Performance Elastomer, LaPlace, Louisiana**

Region 6 continues to monitor the ambient air around the Denka facility using a network of SPod air monitors. The SPods, located at the Fifth Ward Elementary School, East St John High School, Chad Baker Street, Ochsner Hospital, Acorn/Hwy 44, and the Levee, continuously measure ambient VOC concentrations. Any exceedance of certain VOC levels triggers the collection of a 24-hour air sample via summa canister and a subsequent lab analysis of that sample. On July 23, a firmware update that allows the SPods to set a dynamic threshold trigger was installed at all SPod locations. The new dynamic trigger levels have been set for all SPods. The trigger is set at some level above the raw PID data after a baseline removal algorithm has been applied. The trigger levels are currently set at 94 ppb at Fifth Ward Elementary School, 69 ppb at East St John High School, 61 ppb Chad Baker Street, 94 ppb at Ochsner Hospital, 116 ppb at Acorn/Hwy 44, and 100 ppb at the Levee. Using the dynamic trigger, 107 canisters have been triggered and analyzed. Using the dynamic trigger, the highest chloroprene result thus far is 17.588 µg/m<sup>3</sup> at the Chad Baker location. Region 6 extended the Operational Phase of the SPod Monitoring to collect monitoring data during the facility turnaround and will continue monitoring at least through July 2021

#### **Sterigenics, Santa Teresa, New Mexico**

On June 25, Region 6 filed an Amicus Curiae Brief in Third Judicial District Court, Dona Ana County, State of New Mexico. On April 14, the Plaintiff, the State of New Mexico, filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction against STERIGENICS U.S., LLC, SOTERA HEALTH HOLDINGS, LLC, SOTERA HEALTH LLC, AND SOTERA HEALTH COMPANY invoking state tort law. The amicus brief was filed in response to the state court's April 22 order asking EPA and New Mexico to file amicus briefs. In its order, the Court asked EPA to provide its views on the issues raised in Plaintiff's motion related to ethylene oxide fugitive emissions, including the impact of the doctrine of primary jurisdiction with respect to EPA. EPA filed a brief at the Court's request to clarify the applicable statutory and regulatory framework under federal law and the scope of relevant EPA activities. This filing is limited to addressing applicable provisions of federal law and ongoing federal actions that may be relevant to the Court's decision in this case; and the United States ordinarily does not address issues of state law. With respect to EPA's role, there is no basis in the Clean Air Act, federal regulatory law or in ongoing actions by EPA for this Court to invoke the doctrine of primary jurisdiction to stay or dismiss this action. On June 29, the New Mexico state court issued a preliminary injunction prohibiting uncontrolled releases of ethylene oxide from Sterigenic's Santa Teresa, New Mexico, facility. The injunction was based in part on a finding of imminent and substantial endangerment to the public health and welfare of residents in Santa Teresa and nearby communities. The injunction directs Sterigenics to meet with the New Mexico Attorney General within 10 days to coordinate on monitoring, and that the parties further jointly propose a monitoring protocol to the Court within 30 days. The court did not invoke primary jurisdiction, consistent with the position in our amicus brief.

#### **Coal Combustion Residuals Program, Texas**

On June 28, the Federal Register notice was published for the approval of the permit program for the management of coal combustion residuals (CCR) in the state of Texas. The approval becomes effective on July 28. Approval of TCEQ's

partial CCR permit program allows the TCEQ regulations to apply to existing CCR units, as well as any future CCR units not located in Indian Country, in lieu of the federal requirements.

#### **PFAS, New Mexico**

On June 28, Region 6 participated in a call with HQ OLEM/ORCR to discuss the petition submitted by the New Mexico Governor requesting the listing of per and polyfluorinated substances (PFAS) as a class of chemicals within Subpart C of the Resource Conservation and Recovery Act (RCRA), or in the alternative, to list individual PFAS chemicals under RCRA. The petition was submitted pursuant to 42 U.S.C. § 6921(c) which requires the Administrator to act on the petition within 90 days. This is the first petition EPA has received under that provision. Additional discussions will be held at HQ with OGC to determine next steps.

#### **Union Pacific Railroad, Houston, Texas**

Houston Mayor Sylvester Turner has sent a letter to Administrator Regan requesting that EPA: 1) exercise its investigatory and information-gathering authorities under Section 3007 of RCRA and Section 104 of CERCLA to obtain information from Union Pacific Railroad (UPRR) on wastes managed, releases, and remedial options; 2) deploy administrative enforcement authorities under RCRA Sections 3008 and 7003 and use its settlement authorities to obtain relief for the community including relocation; and 3) engage directly with UPRR and the Texas Commission on Environmental Quality in the pending permit renewal and amendment. The June 25 letter also included a City presentation/report on "Identification, Acquisition, and Relocation Preliminary Strategies and Planning."

# **Ex. 5 AC / Ex. 7(A)**

#### **Community Air Toxics Project Report, Houston, Texas**

On July 1, the City of Houston issued a press release on the release of the report regarding formaldehyde air pollution in Houston. The City conducted the study with funds from a national EPA community air toxics project funding competition. The data collected by this study add to the understanding of formaldehyde and its precursors in Houston. The primary concern raised in the report is not direct emissions of formaldehyde, but secondary formation of the chemical in the atmosphere from precursor air pollutants. This investigation into formaldehyde and its precursors, including ethylene, propylene, and isoprene

#### **Ex. 5 Deliberative Process (DP)**

#### **Ex. 5 Deliberative Process (DP)**

Completion of the project and release of the report was delayed due to COVID restrictions.

#### **Highland Dairy, Curry County, New Mexico**

On June 28, Region 6 participated a call with HQ FFRO and OLEM/ORCR to discuss the request from Mr. Schaap with Highland Dairy to designate the area as a Superfund site. The Dairy has been adversely impacted by PFAS contamination from nearby Cannon AFB. HQ is drafting a response, with input and review from Region 6. Region 6 provided examples of responses to other similar requests to list sites as Superfund sites which were already conducting investigation/cleanup activities under RCRA Corrective Action (i.e., Kirtland AFB, Kelly AFB, and UPRR).

#### **2020 Ambient Air Monitoring Data Certifications, Kaw Nation, Oklahoma, and City of Albuquerque, New Mexico**

By July 7, Region 6 expects to sign the response letters for the data certification packages of the ambient air monitoring networks for the City of Albuquerque and Kaw Nation. Technical review for all data certifications has been completed

and flags/comments have been input into AQS. Conference calls with individual Primary Quality Assurance Organizations and tribes will be held in July.

#### **Sandy Creek Energy Station, McLennan County, Texas**

In early July, a petition Order granting all claims will be signed by the Administrator on the Texas Commission on Environmental Quality's title V permit for the Sandy Creek Energy Station. The Sandy Creek petition asserted two claims for objection, both of which are related to the incorporation by reference of permits by rule. The first claim is related to incorporation by reference of permits by rule that are certified, and the second claim is on monitoring, recordkeeping, and reporting requirements for permits by rule that are incorporated by reference.

#### **National Energy Advisory Team**

On July 6, Region 6 will host the National Energy Advisory Team biweekly meeting. The previous meeting's topics included outreach associated with Executive Order 13990 and the CAA 111 Oil & Gas Performance Standards (OOOOa), an update on the Interstate Oil and Gas Compact Commission and EPA Taskforce member selection and upcoming meeting, and a report out on Bureau of Ocean Energy Management led intergovernmental streamlining efforts regarding renewables in the Gulf of Mexico. The upcoming meeting topics include further discussion on the IOGCC/EPA Taskforce meeting, as well as a report on regional oil and gas development.

#### **January Environmental Services, Inc., Oklahoma City, Oklahoma**

On November 30, 2020, DOJ and ODEQ filed a Complaint against January Environmental Services, Inc. (JES) and Cris January in the Western District of Oklahoma alleging nine claims for relief. The judge issued the Scheduling Order on June 2. It requires the parties to complete discovery by April 1, 2022 and assigns the matter to the July 2022 trial docket. The government will file a Motion for Partial Summary Judgement regarding Defendants' status as a used oil processor by September 1. The government submitted its first Request for Production of Documents and its first set of interrogatories to Defendants. Counsel for Defendants provided a partial response to one question on June 21. For this reason, the government is requesting a conference with counsel on June 30. I

Ex. 5 AC / Ex. 7(A)

Ex. 5 AC / Ex. 7(A)

Ex. 5 AC / Ex. 7(A) This case involves violations of the used oil and hazardous waste regulations.

#### **Donna Canal Superfund Site, Donna, Texas**

On July 6 and 12, in coordination with the U.S. Fish and Wildlife Service, fish will be removed from the lower canals and reservoir and sediment samples will be collected for the annual data assessment. In addition, new "No Fishing" warning signs, with text in English and Spanish, will be erected along the critical areas on the lower canal/reservoir. Region 6 has contacted the Donna Irrigation District and is working to identify outreach opportunities in advance of mobilizing to the site.

#### **NEOLAMP Drums, Davis, Oklahoma**

Region 6 has exhausted all potential options for finding a company to accept the abandoned radioactive (krypton-85) cylinders for reuse or disposal from the NEOLAMP site. The only option remaining is to vent the radioactive gas to the atmosphere. Region 6 received formal concurrence for venting from Oklahoma Department of Environmental Quality. The City of Davis has given verbal concurrence; however, written concurrence is still pending from the Mayor. The City also provided approval to conduct the venting at a remote abandoned airstrip north of Davis. Region 6 also contacted the Chickasaw Nation's Environmental Program on June 23 and the Tribe raised no objections to the venting option. Region 6's contractor performed risk modeling, which showed risk to the public from the venting is well within the acceptable risk range used by EPA. Additional modeling is being conducted as backup.

#### **SpaceX Vertical Launch Area, Boca Chica, Texas**

The 30-day response time has elapsed for SpaceX to respond to the U.S. Army Corps of Engineers Galveston District (Corps) and other Resource Agency comments to SpaceX on the proposed Vertical Launch Area Expansion Project seeking Clean Water Act 404 (CWA 404) permit authorization. In its transmittal to SpaceX, the Corps identified the various informational needs required to proceed with the CWA 404 permitting process. In addition, more than 1600 pages of public comments submitted during the permit public notice period were provided to SpaceX. Region 6 is awaiting notification of status information from the Corps.

### **Ozone Exceptional Event, Dallas-Fort Worth, Texas**

On June 30, Region 6 sent a non-concurrence letter to the Texas Commission on Environmental Quality regarding its May 28 exceptional event request for the Dallas-Fort Worth (DFW) area for August 2020 8-hour ozone exceedances at the Grapevine site. All three August 2020 8-hour ozone exceedance days at the Grapevine site are normal DFW summer ozone exceedance days (stagnant, hot, DFW local VOC and NOx precursors) and are not exceptional events.

### **Ozone Milestone Compliance Demonstration, Dallas-Fort Worth & Houston-Galveston-Brazoria, Texas**

Around the end of June 2021, Region 6 expects to issue an adequacy determination letter to the Texas Commission on Environmental Quality for its March 25 submittal of a 2020 attainment year Milestone Compliance Demonstration (MCD) for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria 2008 8-hour ozone NAAQS Serious nonattainment areas. Region 6 has reviewed the MCD and determined it adequate to meet CAA section 182(g) requirements.

## **Major Decisions and Events**

### **Visibility Transport SIP, Oklahoma**

By July 15, Region 6 intends to sign a Federal Register notice proposing approval of the interstate visibility transport portion of the Oklahoma infrastructure SIP for the 2015 ozone NAAQS and disapproval of the interstate visibility transport portions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS.

### **Volatile Organic Compound Emissions in Nonattainment Areas and Former Nonattainment Areas, Oklahoma**

By July 15, Region 6 expects to propose approval of the Volatile Organic Compound Emissions in Nonattainment Areas and Former Nonattainment Areas. This proposal is being signed following discussions with OGC, OITA, and the AO regarding SAFETEA and obtaining their approval on language to use in this Federal Register notice regarding SAFETEA review. When the proposed rule is signed, we will also send out letters to tribes in Oklahoma offering to engage in consultation on this proposed rule. This rule proposes to update the ozone season for nonattainment and former nonattainment areas for Oklahoma. The new ozone season reflects changes made with the promulgation of the 2015 ozone NAAQS.

### **Regional Haze Progress Report SIP, Louisiana**

By July 15, Region 6 expects to propose approval of the Louisiana Regional Haze Progress Report SIP. The SIP was submitted by Louisiana Department of Environmental Quality on March 25 to address the requirement for a periodic report describing progress toward regional haze reasonable progress goals and included a determination of adequacy of the State's Regional Haze SIP for the first implementation period.

### **NESHAP Parts 61 and 63 Delegation, Oklahoma**

By mid-July, Region 6 expects to approve the Oklahoma Department of Environmental Quality's (ODEQ) request for delegation of Part 61 and Part 63 NESHAP standards adopted by the ODEQ between September 2016 and June 2018, with the exception of sources located in Indian Country.

July 14 Regional Tribal Operations Committee

July 22 EJ Stakeholders Quarterly Call